[2015] 9 S.C.R. 69

JOGENDRA YADAV & ORS. A

v.

STATE OF BIHAR & ANR.

(Criminal Appeal No. 343 of 2012)

JULY 15, 2015 B

[S.A. BOBDE AND R.K. AGRAWAL, JJ.]

Code of Criminal Procedure, 1973:

ss. 319, 227 – Nature and power under – Discussed. C

ss. 319, 227 – Discharge u/s.227 in case of person added as accused u/s.319 – Permissibility – Held: A person who is added as accused u/s.319 is not entitled to the remedy of discharge u/s.227 since it would be contrary to the scheme and intent of Code – The exercise of the power u/s.319 must be placed on a higher pedestal – The accused summoned u/s.319 are entitled to invoke remedy under law against an illegal or improper exercise of the power u/s.319, but cannot have the effect of the order undone by seeking a discharge u/s.227 of the Code. D E

s.319 – Accused since inception and accused added u/s.319 – Distinction between. F

Dismissing the appeal, the Court

HELD: 1. A perusal of Section 319, Cr.P.C. shows that a person who is not an accused may be added as an accused only when it appears from the evidence that he has committed any offence for which he could be tried together with the accused. The Section says that in such an eventuality, the Court "may proceed against such person" for the offence which he appears to have committed. Section 227 of the Cr.P.C. on the G H

A other hand, provides that an accused may be discharged if the Judge construes that there is no sufficient ground for the proceedings against him. Both these provisions, in essence, therefore, have the opposite effect. The power under Section 319 of the
B Cr.P.C. results in the summoning and consequent commencement of the proceedings against a person who was hitherto not an accused and the power under Section 227 of the Cr.P.C., results in termination of proceedings against the person who is an accused.
C [Paras 6, 7 and 8] [74-H; 75-A, C, D-E]

2. There is material difference between an accused since inception and accused who has been added as such under Section 319 of the Cr.P.C. An accused since
D inception is not necessarily heard before he is added as an accused. However, a person who is added as an accused under Section 319 of the Cr.P.C., is necessarily heard before being so added. Often he gets a further hearing if he challenges the summoning order before
E the High Court. It seems incongruous and indeed anomalous if the two sections are construed to mean that a person who is added as an accused by the court after considering the evidence against him can avail
F remedy of discharge on the ground that there is no sufficient material against him. Moreover, the extraordinary power under Section 319, Cr.P.C., can be exercised only if very strong and cogent evidence occurs against a person from the evidence led before
G the Court. [Para 9] [75-G-H; 76-A-C]

3. A person is added as an accused under Section 319 of the Cr.P.C., on the basis of evidence; whereas an accused is discharged under Section 227 of the
H Cr.P.C., on a sifting of material collected i.e. "the record

of the case and the document submitted herewith" in order to find out whether or not there is sufficient ground for proceeding against the accused. In fact, the mandate of Section 228, Cr.P.C., is that the Judge only need be of "opinion that there is ground for presuming that the accused has committed an offence ....." before framing a charge. An order for addition of an accused made after considering the evidence cannot be undone by coming to the conclusion that there is no sufficient ground for proceeding against the accused without appreciation of evidence. [Para 11] [77-F; 78-A-B]

Hardeep Singh v. State of Punjab and Ors. **(2014) 3 SCC 92: 2014 (2) SCR 1;** *Ajay Kumar Parmar v. State of Rajasthan* **(2012) 12 SCC 406: 2012 (8) SCR 970;** *New India Assurance Co. Ltd. v. Nusli Neville Wadia and Anr.* **(2008) 3 SCC 279: 2007 (13) SCR 598 – relied on.**

Case Law Reference

2014 (2) SCR 1	**relied on.**	**Para 9**
2012 (8) SCR 970	**relied on.**	**Para 11**
2007 (13) SCR 598	**relied on.**	**Para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 343 of 2012

From the Judgment and Order dated 24.11.2010 of the High Court of Judicature at Patna in Cr. Misc. No. 12193 of 2008

Sishir Pinaki, Shailendra Kumar, Suryodaya Prakash Tiwari, Amit Pawan for the Appellants.

Gopal Singh, Prerna Singh, Shekhar Prit Jha, Dr. Richa Awasthi Dubey for the Respondents.

A The Judgment of the Court was delivered by

S. A. BOBDE, J. 1. This is an appeal by four persons who have been added as accused under Section 319 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') in B Sessions Trial No.446/2002 for an offence under Section 302 read with Sections 149 and 323 of the Indian Penal Code, 1860 (for short 'the IPC') and Section 27 of the Arms Act, 1959. The trial is being held in respect of the murder of one Saryug Yadav. On 04.06.2000, FIR was lodged by an informant under C Sections 149, 302 and 323 of the IPC against 8 accused. A charge-sheet was submitted on 23.04.2001 only against four persons. Later on, a supplementary charge-sheet was submitted on 31.01.2003 by which one Bhankhar Yadav was included. A final form was submitted excluding the four D appellants herein viz. Jogendra Yadav, Kailash Yadav, Kusum Pahalwan, Brijendra Yadav from the array of parties. On 18.02.2003, the Magistrate accepted the charge-sheet and the final form while taking cognizance of the offence. The case was committed to the Court of Sessions.

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2. In the course of the trial, the evidence of the widow and two sons of the deceased were recorded. On the basis of the evidence the Additional Sessions Judge on 05.02.2005 under Section 319 of the Cr.P.C. issued notice to the appellants F asking them to show cause as to why they should not be added as accused. After giving an opportunity to the appellants to file a reply, the learned Additional Sessions Judge summoned the appellants as accused for being added to the proceedings. It is nobody's case that they were not heard before such G summon. In any case after the appellants were added, they preferred an application under Section 482 of the Cr.P.C. before the High Court, which was pending for a long time. They finally withdrew this application since they had got relief by way of discharge under Section 227 of the Cr.P.C. The H

respondent State preferred a Criminal Revision Application before the High Court. The High Court set aside the Order dated 23.09.2006 in Criminal Revision Application passed by the Additional Sessions Judge by which the appellants were discharged. While setting aside the order, the High Court made several observations on the merits of the case as well as on the material that was taken into account before discharging the appellants – accused. The High Court also observed that the order by which the appellants were added under Section 319 of the Cr.P.C. was not challenged and was allowed to become final. This may not actually be accurate since, as noted above, the appellants had in fact challenged the order but had withdrawn the application under Section 482 of the Cr.P.C.

3. The High Court also observed that the order of discharge virtually nullifies the order under Section 319 of the Cr.P.C. made earlier by which the accused were added. It is this last observation which has been put in issue before us.

4. Mr. Sishir Pinaki, learned counsel for the appellants submitted that Section 227 of the Cr.P.C. can be availed of by an accused, even if he is added as an accused under Section 319 of the Cr.P.C. since the effect of adding such a person is that he becomes newly added accused who is entitled to avail of all the remedies available to him under the Cr.P.C., in particular, the remedy of discharge. It is, therefore, necessary to construe Section 227 and Section 319 of the Cr.P.C.

5. Provisions of Sections 227 and 319 of the Cr.P.C. are read as under:

"227. **Discharge.-** If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there

A is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

319. **Power to proceed against other persons**
B **appearing to be guilty of offence**.-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for
C which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may
D be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the
E offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

F (a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person
G when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

6. On a perusal of Section 319 of the Cr.P.C., it is apparent that a person who is not an accused may be added as an
H accused only when it appears from the evidence that he has committed any offence for which he could be tried together

with the accused. The Section says that in such an eventuality, the Court "*may proceed against such person*" for the offence which he appears to have committed. In other words, a person who is not an accused becomes liable to be added where he appears to have committed an offence. Thereupon, the effect is that the Court may proceed against such a person.

7. Section 227 of the Cr.P.C. on the other hand, provides that an accused may be discharged if the Judge construes that there is no sufficient ground for the proceedings against him. In other words, if the Judge is of the view that there are no sufficient grounds for the proceedings against the accused, he may be discharged, whereupon the proceedings against him are dropped.

8. It is apparent that both these provisions, in essence, have the opposite effect. The power under Section 319 of the Cr.P.C. results in the summoning and consequent commencement of the proceedings against a person who was hitherto not an accused and the power under Section 227 of the Cr.P.C., results in termination of proceedings against the person who is an accused.

9. It was, however, urged by learned counsel for the appellants that in order to avail of the remedies of discharge under Section 227 of the Cr.P.C., the only qualification necessary is that the person should be accused. Learned counsel submitted that there is no difference between an accused since inception and accused who has been added as such under Section 319 of the Cr.P.C. It is, however, not possible to accept this submission since there is a material difference between the two. An accused since inception is not necessarily heard before he is added as an accused. However, a person who is added as an accused under Section 319 of the Cr.P.C., is necessarily heard before being so added. Often he gets a further hearing if he challenges the summoning

A order before the High Court and further. It seems incongruous and indeed anomalous if the two sections are construed to mean that a person who is added as an accused by the court after considering the evidence against him can avail remedy of discharge on the ground that there is no sufficient material
B against him. Moreover, it is settled that the extraordinary power under Section 319 of the Cr.P.C., can be exercised only if very strong and cogent evidence occurs against a person from the evidence led before the Court. It is now settled vide the Constitution Bench decision in ***Hardeep Singh v. State of***
C ***Punjab and Others*** [(2014) 3 SCC 92] that the standard of proof employed for summoning a person as an accused under Section 319 of the Cr.P.C., is higher than the standard of proof employed for framing a charge against an accused. The Court
D observed for the purpose of Section 319 of the Cr.P.C., that "*what is, therefore, necessary for the Court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to the conviction of a person sought to be added as the accused in the case.*" As
E regards the degree of satisfaction necessary for framing a charge this Court observed in para 100:-

> "100. However, there is a series of cases wherein this court while dealing with the provisions of Sections 227,
F 228, 239, 240, 241, 242 and 245 of the Cr.P.C., has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to
G whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The court has to find out whether the
H materials offered by the prosecution to be adduced as

evidence are sufficient for the court to proceed against the accused further". A

The Court concluded in para 106 as follows:-

"106. *Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction.....*" B C

10. Thus it does not stand to reason that a person who is summoned as an accused to stand trial and added as such to the proceedings on the basis of a stricter standard of proof can be allowed to be discharged from the proceedings on the basis of a lesser standard of proof such as a prima facie connection with the offence necessary for charging the accused. D E

11. This view is further fortified by the fact that a person is added as an accused under Section 319 of the Cr.P.C., on the basis of evidence; whereas an accused is discharged under Section 227 of the Cr.P.C., on a sifting of material collected i.e. "*the record of the case and the document submitted herewith*" in order to find out whether or not there is sufficient ground for proceeding against the accused. In fact it may be noted that the mandate of Section 228, Cr.P.C., is that the Judge only need be of "*opinion that there is ground for presuming that the accused has committed an offence .....*" before framing a charge. In fact this Court has held in ***Ajay Kumar Parmar v. State of Rajasthan*** reported in (2012) 12 SCC 406 that appreciation of evidence at the stage of Section F G H

A 227 of the Cr.P.C., is not permissible (vide para 17). It is, therefore, clear that an order for addition of an accused made after considering the evidence cannot be undone by coming to the conclusion that there is no sufficient ground for proceeding against the accused without appreciation of
B evidence.

12. We are not unmindful of the fact that the interpretation placed by us on the scheme of Sections 319 and 227 makes Section 227 unavailable to an accused who has been added
C under Section 319 of the Cr.P.C. We are of the view, for the reasons given above that this must necessarily be so since a view to the contrary would render the exercise undertaken by a Court under Section 319 of the Cr.P.C., for summoning an accused, on the basis of a higher standard of proof totally
D infructuous and futile if the same court were to subsequently discharge the same accused by exercise of the power under Section 227 of the Cr.P.C., on the basis of a mere *prima facie* view. The exercise of the power under Section 319 of the Cr.P.C., must be placed on a higher pedestal. Needless to
E say the accused summoned under Section 319 of the Cr.P.C., are entitled to invoke remedy under law against an illegal or improper exercise of the power under Section 319, but cannot have the effect of the order undone by seeking a discharge
F under Section 227 of the Cr.P.C. If allowed to, such an action of discharge would not be in accordance with the purpose of the Cr.P.C in enacting Section 319 which empowers the Court to summon a person for being tried along with the other accused where it appears from the evidence that he has
G committed an offence. It would be apposite to refer to the principle of purposive construction of a statute invoked by this Court in ***New India Assurance Co. Ltd.*** v. ***Nusli Neville Wadia and Anr.*** (2008) 3 SCC 279, which is as under:

H *"51..... With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion*

that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled, which in turn would lead the beneficiary under the statutory scheme to fulfil its constitutional obligations as held by the Court inter alia in Ashoka Marketing Ltd.

52. Barak in his exhaustive work on "Purposive Construction" explains various meanings attributed to the term "purpose". It would be in the fitness of discussion to refer to Purposive Construction in Barak's words:

"Hart and Sachs also appear to treat 'purpose' as a subjective concept. I say 'appear' because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfil their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably."

13. Ms. Prerna Singh, learned counsel for the State also submitted that a person who is an accused under Section 319 ought not to be given an opportunity to avail of the remedy of

A discharge under Section 227 since it would be contrary to the scheme and intent of the Cr.P.C.

14. We have no difficulty in accepting this submission for the reasons stated above. We are also satisfied that it would B not result in any undue hardships to the accused since the remedy before a superior court is available.

15. In the result, we see no merit in the appeal which is liable to be dismissed.

C 16. The criminal appeal is dismissed in view of the above.

Devika Gujral Appeal dismissed.